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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-185

KLIPPAN, GMBH,

Petitioner,

v.

VOLKSWAGEN OF AMERICA, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF ALASKA

BRIEF FOR RESPONDENT IN OPPOSITION

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This brief is submitted by respondent Volkswagen of America, Inc. ("VWoA") in opposition to the Petition for a Writ of Certiorari filed herein by petitioner Klippan, GmbH ("Klippan" or "petitioner").

Opinions Below

The opinion of the Alaska Supreme Court (Pet. App. 1a-15a) is reported at 611 P.2d 498. The opinion of the lower court (Pet. App. 16a-23a), the Superior Court for the State of Alaska, Third Judicial District, is unreported.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented

Under the special circumstances of this case, as found by the courts below, including the fact that Klippan (1) manufactured and sold millions of its seat belts for resale in the United States without any limitation; (2) communicated with American federal and state agencies in order to procure approval for the sale of its product in the United States; (3) conformed its seat belts to satisfy Alaska safety requirements; and (4) actually labelled its product with the name "Klippan" as being approved for sale in the entire United States, the sole question raised by the Petition is:

> Did the State of Alaska, the place where the underlying accident occurred, properly exercise *in personam* jurisdiction over the petitioner?

In view of the controlling determinations of this Court, the review sought by the petitioner lacks merit and the petition should be denied.

Constitutional Provision and Statute Involved

The constitutional provision and statute involved are adequately set forth in the Petition.

Statement of the Case

At the outset it should be noted that Klippan omits from its Petition all references to its Alaska and United States related conduct and activities. The record discloses, however, that Klippan is a major manufacturer of seat belts. (R.323, 336).* Of the nearly eleven million seat belt

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* Citations to pages preceded by the letter "R" refer to the Record on Appeal before the Alaska Supreme Court.

assemblies sold by Klippan to ten automobile manufacturers for incorporation into their automobiles destined for sale and distribution into the United States (R.174-75, 627), over 700,000 seat belt assemblies were provided by Klippan to Volkswagenwerk A.G. ("VWAG")* for export to the United States. Each of these 700,000 seat belt assemblies were identical to the seat belt involved in the Munns accident.

To facilitate the sale of its product in the United States, Klippan communicated directly with American federal and state government agencies to obtain issuance of product approval certifications for its seat belt systems. (Pet. App. 18a). Klippan's further activities to insure that its product would be distributed in Alaska, as well as the rest of the United States, are succinctly set forth by the Alaska Supreme Court:

> "Klippan has sold millions of seat belt assemblies for incorporation into automobiles it knew were destined for purchase by consumers throughout the United States. Alaska law required installation of lap belts in all automobiles sold in this state during 1967, the model year of the Munns car. Klippan represented by a label sewn on the belt involved in the Munns accident that its restraint systems were 'approved for

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* VWAG and VWoA, the importer of Volkswagen vehicles into the United States, were defendants in the first stage of this litigation, the products liability lawsuit brought in Alaska by Dr. Munns. That case was settled and VWoA and VWAG commenced the present indemnity and contribution action against Klippan and its parent corporation, Allied Chemical Corporation. Based upon a forum selection clause in the contract between VWAG and Klippan, the courts below dismissed VWAG's claims. (611 P.2d at 504; Pet. App. 20a). However, the Alaska Supreme Court's determination, after extensive inquiry, that VWoA, as a separate and distinct corporate entity, was not bound by VWAG's forum selection provision, is based upon unassailable authority. (611 P.2d at 505-06, Pet. App. 13a-15a).

> sale in all states,' and took steps to insure that the belts complied with standards established by the American Society of Automotive Engineers. Klippan thus knew or had reason to believe that its seat belts could be distributed and sold for use in Alaska, and did not limit the sale or marketing of the restraint system in the United States." 611 P.2d at 500-01, Pet. App. 4a. (footnote omitted).

Finally, although the precise number of Klippan-equipped Volkswagen vehicles sold in Alaska during 1967 (the model year of the Munns automobile) has been disputed, the Alaska Supreme Court found that Klippan knew or should have known "that a number of Klippan-equipped vehicles would be sold directly for use in Alaska through dealerships here and in other states." 611 P.2d 501 n.5, Pet. App. 5a n.5.*

Based upon petitioner's extensive relationship with Alaska and the rest of the United States, the Alaska Supreme Court held that Klippan was subject to its jurisdiction:

> "where, as here, the component manufacturer deliberately designs its product in anticipation of it being widely marketed in American jurisdictions, and sells the component directly to several major auto producers with the knowledge that the component will be incorporated into their products and sold through-

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* It is significant that Klippan is insured in the United States by American insurance companies (R.360), and that Klippan has been held subject to the jurisdiction of the courts of California and Illinois. (R.337-38). Klippan limits its challenge to jurisdiction to the case where it is sued for contribution or indemnity. Klippan does not raise in this Court any contention that it would not have been subject to suit in Alaska directly by the plaintiff in the original lawsuit.

out America. The fact that Klippan did not directly engage in business dealings in Alaska does not relieve it from answering for injuries which may result from use of its product in this state. It was entirely foreseeable to Klippan, from its own conduct, that a number of its restraint systems would be purchased by consumers in Alaska through normal sales and distribution patterns in the United States." 611 P.2d at 501, Pet. App. 5a. (footnotes omitted).

Reasons for Denying the Writ

The decision of the Supreme Court of Alaska is fully consonant with the requirements of the Due Process Clause of the Fourteenth Amendment as articulated by this Court in *World-Wide Volkswagen Corp.* v. *Woodson,* 100 S.Ct. 559 (1980). Indeed this Court's *Woodson* opinion was carefully considered by the Alaska Supreme Court (611 P.2d at 501-02 n.6, Pet. App. 6a n.6) and the contacts referred to above were reviewed.

Consistent with *Woodson* and other controlling authorities, the Alaska Supreme Court weighed whether Klippan has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hansen* v. *Denckla,* 357 U.S. 235, 253 (1958); *World-Wide Volkswagen Corp.* v. *Woodson, supra,* 100 S.Ct. at 567. It found that Klippan purposefully promoted the export of millions of its product to the United States. Klippan actively encouraged the exploitation of that market by specifically manufacturing and designing its seat belts to comply with the safety standards of all the states and the federal government. No seat belt could be sold in Alaska without satisfying Alaskan engineering and safety requirements.

Klippan thus sought out the benefits and protection derived from Alaska law, as well as those of all other states, when petitioner's finished product was engraved with the ubiquitous notice that it was "approved for sale in all states" and bore the name "Klippan" on a label in each seat belt. Under these facts, Klippan satisfies the criterion established by *Woodson.*

The record and opinions below amply demonstrate that Klippan's "conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp.* v. *Woodson, supra,* 100 S.Ct. at 567.

Klippan in no way fits the fact pattern of the *Woodson* case where a local New York automobile dealer and wholesaler were found to have had no "contacts, ties or relations" with Oklahoma (100 S.Ct. at 568) because they never sold in Oklahoma or sought to serve the forum market (100 S.Ct. at 566). Jurisdiction in that case was denied because mere foreseeability is insufficient. In contrast, this is a case of specific contacts.

Nor can Klippan insulate itself from defending suit in Alaska merely by characterizing itself an alien manufacturer of component parts. Such wooden formulations for determining state court jurisdiction have long since been rejected by this Court. *See, International Shoe Co.* v. *Washington,* 326 U.S. 310, 319 (1945). Klippan's argument cannot overcome this Court's admonition in *World-Wide Volkswagen Corp.* v. *Woodson, supra,* 100 S.Ct. at 567, that where the sale of a product of a manufacturer or distributor

> "arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other states, it is not unreasonable

> to subject it to suit in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its product into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Compare *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961)."

Finally, the Alaska Supreme Court determined that the significant state interest of adjudicating the rights and liabilities of the maker of a defective product causing substantial personal injuries in the state was furthered by VWoA's indemnity action. 611 P.2d at 502, Pet. App. 6a-7a. *Woodson* confirmed this as a relevant jurisdictional factor. *World-Wide Volkswagen Corp.* v. *Woodson, supra,* 100 S.Ct. at 564.

The Alaska Supreme Court has faithfully applied the due process principles set forth by this Court. There is no conflict between the opinion of the Alaska Supreme Court and any decision of this Court.

Conclusion

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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